IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.69 OF 2007

National Bicycle Corporation
of India Ldt. ...Petitioner
Versus
M/s.Anandji Naranji & Co. ...Respondent

Shri V.P.Sawant for the Petitioner.
Shri H.V.Gala for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 25, 2007.

P.C.:

1. Submissions of the learned counsel appearing for the parties were heard yesterday. The revision Applicant is the original Defendant. A suit for eviction was filed by the Respondent landlord against the Applicant. The Applicant is a tenant of the godown premises admeasuring about 10,000/- sq. feet more particularly described in the plaint. The suit proceeds on the footing that the present Applicant is not protected by the provisions of Maharashtra Rent Control Act, 1899 in view of the provisions of section 3(1) of the said Act. It is contended that notice of termination of tenancy was issued on 17th August, 2000 which has been duly served. The trial Court passed a decree for possession which has been confirmed in Appeal.

2. The first submission made by the learned counsel appearing for the Applicant is that on the plain reading of the notice, no termination of tenancy has been made

by the Respondent landlord. It is submitted that as there is no specific termination, the notice cannot be a valid notice of termination issued under section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the said Act of 1882). The second submission is that the proceedings were pending before the A.A.I.F.R and therefore the Court could not have proceeded with the suit.

3. So far as the second submission is concerned, I find that the same was not advanced before the courts below. Therefore, the said submission cannot be allowed to be urged for the first time in a Revision Application under section 115 of the Code of Civil Procedure, 1908. So far as the first submission regarding legality and validity of the notice is concerned, it will be necessary to refer to the assertions made in the notice dated 17th August, 2000. In paragraph No.3 of the said notice it is stated thus:

> "3. In the circumstances we are instructed to call upon you, which we hereby do and call upon you to vacate and hand over, vacant possession of the said premises to our clients at the expiry of the month of your tenancy, next after the current month of your tenancy, the current month being the month in

which you receive this notice".

4. The question is whether the said notice is in compliance with the requirement of section 106 of the said Act of 1882. In the notice it is asserted that the Appellant is the tenant. By the said notice the Appellant has been called upon to vacate the suit premises. It is thus obvious that the notice is in accordance with the requirements of section 106 of the said Act of 1882.

5. There is no dispute about the fact that the Applicant is not protected by the provisions of the Maharashtra Rent Control Act, 1999. There is no ground to interfere with the concurrent decrees passed by the courts below in a limited revisional jurisdiction. The Revision Application is, therefore, rejected. At this stage, a request is made by the learned counsel appearing for the Applicant that decree for possession should not be allowed to be executed for a reasonable time to enable the Appellant to approach the higher court.

6. Notwithstanding the rejection of the revision Application, the decree for possession shall not be executed till 31st August, 2007 subject to condition that the Applicant will not create any third party

interests and will not part with possession of the suit premises.

JUDGE